Communiqué

September, 2000

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PRESIDENT'S REPORT

Law Societies of Western Canada Embark on New Initiatives

Herbert J. Peters

During the first number of months of my term as President of The Law Society of Manitoba I have spent a fair amount of time outside of the Province. In early June, I attended The Law Society of Alberta meetings in Jasper. In late August, the Federation of Law Societies held its meetings in Halifax and in the middle of September, I attended the meetings of The Law Society of Saskatchewan.

As most of you will know, The Law Society of Manitoba has been a member of the Federation of Law Societies of Canada since its inception. In addition, there has been a long standing tradition for the Law Societies of Saskatchewan and Manitoba (given their proximity and the similar size of their membership) to cooperate and to have each of their presidents visit the other jurisdiction for meetings of their respective Law Societies. I believe that this was the first time (at least in recent memory) that Manitoba was asked to be present at the meetings of the Law Society of Alberta (representatives of The Law Societies of Saskatchewan and British Columbia were also present).

Why is my travel itinerary of any significance to Manitoba lawyers? I am pleased to advise you of two initiatives which have been jointly undertaken by The Law Societies of Manitoba, Saskatchewan, Alberta and British Columbia.

Before I describe those initiatives, you should be reminded of a little bit of history. The Federation of Law Societies of Canada has generally acted as the umbrella organization of the thirteen governing bodies of the legal profession in Canada, each of which is completely independent. As a result, the best that can usually be accomplished at meetings of the Federation is the exchange of information. Collective or joint activity is very difficult because of the virtual impossibility of having thirteen Law Societies agree on the approach to any particular topic.

In addition, the two largest jurisdictions, Ontario and Quebec, regularly advise the rest of us that they need neither the Federation nor any of our Societies to carry out their mandate. Manitoba has been at the forefront of the push for a reform of the Federation. My immediate predecessors, Colleen Suche, Doug Finkbeiner and Barney Christianson have been particularly active in working for such reform. While revolutionary reform has not been achieved (and probably never will be achieved), there are some hopeful signs that some progress is being made.

Born at least in part out of a frustration with the lack of progress and cooperation at the Federation level, the Law Societies of Western Canada have begun to talk to each other. At The Law Society of Alberta meetings in Jasper, two western task forces were established. The first task force is examining the basis upon which increased mobility of lawyers in Western Canada can be facilitated. It is recognized that most of our clients' business activities are not bound or jurisdictionally limited by provincial boundaries. You and I, however, have been limited to carrying on our practices only within the jurisdictions in which we have a licence to practice. The mobility task force has reported that in its view, it is in the interests of the public and lawyers to allow inter-jurisdictional practice in a manner that is consistent with the duties imposed on the Law Societies to regulate the practice of law within their jurisdictions. There is, therefore, a proposal before each of the four Western Law Societies to enhance the mobility of lawyers beyond that which is now permitted in a limited way by the inter-jurisdictional practice protocol which all four western provinces have adopted.

A second task force is examining the coordination of the work of the Western Law Societies in the area of education and, most particularly, the Bar Admission Course. Each Law Society expends significant resources on education. It is obvious that if the efforts of Western Canada can be coordinated, there is considerable potential for the more efficient use of these resources. In addition, we will all benefit from a comprehensive review of our education programs (both bar admission and continuing education). One of the results of such review will be the clearer articulation of the particular skills and competencies which are required by lawyers today.

Our representatives on the mobility task force are Barney Christianson and Marilyn Billinkoff and on the education task force are Donna Miller and Sheila Redel.

The mandate of The Law Society of Manitoba is a public well served by an honorable, competent and independent profession. While we often focus on the regulatory and disciplinary functions of The Law Society, the two task forces that I have described are examples of The Law Society's activities in facilitating the more effective delivery of legal services by the members of The Law Society of Manitoba.

If you have any questions about the foregoing, please do not hesitate to call me.

Allan's Odds and Ends

Allan Fineblit, Q.C.
Chief Executive Officer

- Is it just me or has the Bar Association **baseball league** greyed significantly? The playoffs were highlighted not by sensational plays (there were lots) or over the fence home runs (there was one), but by a record number of hobbling, moaning and aching veterans like myself. Perhaps it's time for Don Campbell to consider a merger with the chiropractors' baseball league.
- Thanks to **Mary Kate Harvie** (as she then was) who cleaned out her office and sent me the best of the trash – a 1963 tariff book. In 1963 the recommended fee for a will was $10, a caveat $8, registration of copyright $25 and preparing a prospectus was $150. What is truly amazing though is the tariff for purchase of real property. The tariff recommends a minimum charge based on the

value of the property. For a $100,000 home, for example, the recommended minimum charge is $550. Those were the days.

- I was saddened to hear about the recent death of **Art Rich, Q.C.** I first met Art in 1976 when he was with Arpin and Company on the third floor of 323 Portage Avenue. Daytons department store was on the main floor and Legal Aid had an office in the basement. Every morning, very, very early, Art would come down and instruct Ron Meyers and I in the proper method of brewing tea. You will be missed old friend.
- In the last *Benchers Bulletin* I asked about fast lawyers – those who ran for a good cause in the Manitoba marathon. **Keith Addison** ran a very fast half marathon with a time of 1:26:51. **Cathy Finnbogason** finished at 1:40:43 which is very fast, particularly since her sister notes she is "old and a mother of three". Speaking of old, **Grant Mitchell** wants you to know that he would have been the fastest lawyer if he ran. We wish Grant a "speedy" recovery from his surgery.
- Hey out there, this isn't Alberta. In Manitoba lawyers aren't automatically **Notaries Public** unless they apply to be one with Consumer and Corporate Affairs. Apparently some of you didn't know that and have been innocently notarizing documents without knowing you couldn't. Now you know.

Benchers' Meeting Highlights

The Benchers of the Law Society met on September 8, 2000 in conjunction with the Western Manitoba Bar Association meeting at Clear Lake. The following are the meeting highlights:

A committee that reviewed the **discipline process** reported on its work. The committee is recommending three significant changes. Detailed proposals and supporting rule changes will be considered at upcoming meetings.

1. It is recommending that members with minor discipline convictions be eligible, after the passage of time, to apply for a **pardon**.
2. It is recommending that a new process be introduced to permit quality of service complaints to be referred initially to a designated member in the lawyer's firm to attempt to resolve them informally.
3. Finally, it is recommending that a new discipline disposition be available whereby a discipline panel can permit a member to **voluntarily withdraw** from practice as a disposition to the charges they are convicted of.

Benchers approved a new system to honour **senior practitioners** (40 years or more) who retire or have already retired from practice. Those lawyers will be made honourary members of the Law Society and will be given non-practising status without the requirement to pay the non-practising fee.

Benchers received reports on initiatives for greater co-operation among Western provinces. Past President **Barney Christianson** reported on licensing discussions which are under way with the aim of significantly increasing mobility opportunities for Western Canadian lawyers. **Donna Miller** reported on discussions leading to a unified Bar Admission program among the Western provinces.

President **Herb Peters** reported on the meeting of the Federation of Law Societies and initiatives to:

1. Create a national system for secure electronic communication by lawyers;
2. Create a national virtual library;
3. Support a national project in co-operation with the CBA promoting the use of lawyers in real estate transactions.

Benchers received a monitoring report on what has been done to promote the "**equity ends**" they had established. Copies of the full report are available from Pat Bourbonnais at 942-5571.

Randall Baker, Q.C., President of the Law Society of Saskatchewan, addressed the meeting and spoke about the key issues in Saskatchewan and noted the remarkable similarities between our two Law Societies and the issues we are faced with.

Whoops!

In the last Bencher Bulletin, the Bencher meeting highlights had a big mistake. In describing a motion introduced by Sid Green, I said that the motion was "to restrict spot audit findings to matters involving the trust account rules only." That was right. I went on to say, "The motion focused on whether or not trust account rule breaches should be ignored..." That was wrong. I meant to say, "The motion focused on whether or not **non**-trust account breaches should be ignored ..." Sid was justifiably annoyed and I had to buy him lunch. Those of you who were misled, call me and I'll buy you lunch as well.

Allan Fineblit, Q.C.
Chief Executive Officer

Notice of Benchers' Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, October 26, 2000 at 12:30 p.m.** in the Society's Boardroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

Allan Fineblit, Q.C.
Chief Executive Officer

I lost the battle of the binders. I became an expert on binders this year when I went to buy the $14,000 worth of school supplies my children apparently required. This was only slightly less than what I paid for my first house; though in fairness, the binders alone occupy more square feet than that cozy little bungalow. I came to learn that the three-ring binder comes in dozens of shapes and sizes and that my children required all of them.

The Law Society of Manitoba's *Handbook of Professional Conduct* comes in a moderately attractive three inch green variety binder. In those three inches you will find everything you need to know to maintain your safe and effective practice. Three inches amount to about 75 millimetres and five of those are the *Act*, 15 are the Rules, 20 for the Code of Professional Conduct, five for Practice Directions and 20 for the Discipline Case Digest. The rest is odds and ends like your insurance policy.

I have been engaged in a struggle with this binder for over two years. I believe we have way too many Rules and there is significant duplication with the Code and Practice Directions. I am bound and determined to get rid of what we don't need and to tidy it all up.

This week I had two bad experiences that made me realize that I have lost the battle of the binders. I got a call from a lawyer asking for advice on a really tricky ethical issue. I did my usual "on one hand...on the other hand" routine (I learned it from Evan Roitenberg's masterful portrayal of Tevya in the MBA production of *Fiddler on the Roof*).

Fifteen minutes after hanging up it occurred to me that the Code of Conduct probably had something somewhere about this topic. Sure enough, I found the definitive answer in Chapter 16. Why didn't I know it was there and if I didn't know, how can we reasonably expect the profession to have a good handle on that three inches of material?

The second bad experience was worse. Every year we order new binders for the Bar Admission course. This year's version looked funny. The same attractive green cover, the same grey tabs...hold on a minute...aha, **four and a half inches** wide. You see, the Discipline Case Digest grows every year as new cases are reported. My goal was to streamline before those cases burst the seams of the old three inchers. Clearly I'm too late for that.

Here is a status report. The *Act* revision proposals are with a special Bencher committee and should be ready to go to Benchers in October. We won't wait for the *Act* to be amended by the Legislature (which

can take a while) and will proceed to streamline those Rules not dependent on *Act* change...as many as we can, as fast as we can.

We are holding off a bit on the Code because other developments, like Western co-operation, the CBA Code of Conduct initiative and the like should play out a bit before we make significant changes. That will take a year or so and during that time, we will work on streamlining the Practice Directions.

So don't throw out that old three inch binder yet. I lost the battle of the binders, but I intend to win the war.

Notice to the Profession

The Practice and Ethics Committee of The Law Society of Manitoba wishes to remind members of the importance of properly researching utility caveats. The Committee recently considered an incident involving a right of way located on private property in rural Manitoba. Situated on the right of way was a high pressure gas transmission pipeline. The right of way was registered against the property by way of a caveat stating that the land owner was not entitled to construct or erect any structure on the right of way without the prior written consent of the utility. The restriction was placed upon the property due to serious safety concerns relating to the placement of structures on high pressure pipelines. Notwithstanding the existence of the caveat, the land owner erected a home in close proximity to the pipeline. Due to safety concerns, the home must now be relocated at a significant cost.

The Committee wishes to remind members that even in the case of a simple residential transaction in an urban centre, the failure to properly search the title to the property can lead to exposure on the part of the client, the member and the insurance fund. Consequently, members are cautioned to obtain copies of any encumbrances, together with such other evidence as is necessary to ascertain the precise nature of the encumbrance, for example a plan or sketch detailing the exact location of the utility. Such information should then be brought to the attention of the client with an adequate explanation of the effect of such encumbrance.

Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Inactive to Practising:

July 4, 2000 Michael A. Jack
July 11, 2000 Odaro Omanuwa
August 28, 2000 Paula P. Hamilton September 1, 2000 Harold J. Dick
September 1, 2000 Margaret B.J. McKenty

Non-Practising to Practising:

July 1, 2000 Kameron L. Hutchinson
July 1, 2000 David W. Langtry
July 10, 2000 Diane M. Rooswinkel
August 24, 2000 Terence J. Sargeant
September 1, 2000 John-Paul F. Bogden
September 1, 2000 Shane H.I. Lasker
September 1, 2000 Lori A. Lavoie
September 1, 2000 George Tacik
September 11, 2000 Sandra D. Phillips

Practising to Non-Practising:

May 10, 2000 Virginia G. Menzie
June 16, 2000 Liisa M. Maki

July 1, 2000 Lewis D. Wasel
July 1, 2000 Thomas W. Harrison
July 1, 2000 Nata L. Spigelman
July 1, 2000 Jocelyne M.Y. Vigier
July 1, 2000 Brenda L. Cherkas
August 5, 2000 Martin Jaszczuk
August 28, 2000 Baerbel Langner-Pennell
September 1, 2000 Diane H. Hartley

Practising to Inactive:

May 9, 2000 Joe E. Hershfield, Q.C.
June 23, 2000 Arnis Tillers
July 1, 2000 Brian J. Pannell
July 1, 2000 M. Jean Murray
July 1, 2000 Wendy D. Post
July 1, 2000 Roger K. Sobotkiewicz
July 1, 2000 Sidney D. Laviolette
July 1, 2000 Norman G. Larsen (retired)
July 13, 2000 Shahla Khan
July 22, 2000 Jeffrey B. Johnston
July 26, 2000 Judith A. Elliot
July 26, 2000 Mary K. Harvie
August 1, 2000 Brian A. Juce
August 28, 2000 Karen L. Dyck
September 1, 2000 G. Brent Cooper
September 1, 2000 Keith i.M. Heming
September 1, 2000 Jeffrey B. Echols

Transfer from Another Province:

The following members were called to the Bar of Manitoba and are now entitled to practice law in this jurisdiction, having fulfilled the requirements of *Rule 99*.

August 15, 2000 **Pamela A. Harrod** of the Law Society of Upper Canada
August 15, 2000 **Gerry K. McNeilly** of the Law Society of Upper Canada
Augus 31, 2000 **Darryl R. Buxton** of the Law Society of Upper Canada

Summer Fun Contest Winner

Allan Fineblit, Q.C.
Chief Executive Officer

We asked you to tell us about Manitoba legal families. You probably thought it would be hard to compete with the Monnin/Allen/Miller dynasty. Well, it turns out that there are quite a few interesting legal families, including several three generation ones. The legal family trees I particularly enjoyed weren't quite so linear. The Dowhan clan is a good example. Walter Dowhan was called to the Bar in 1952. He married one of his secretaries in 1958 and Simone continues to work with him as his secretary and bookkeeper. In 1988 their son, Robert, was called to the Bar and the law firm of Dowhan & Dowhan was established. By the way, Robert's father-in-law is Holman Olson who practised law in Manitoba until he retired in 1997.

In 1990 Robert's sister, Louise Dowhan-Bertouille, joined the firm. Louise is married to Grant Bertouille who is a police officer with the Winnipeg Police Service. She really wants to win the prize, but Louise, I can't count the fact that your children, Brett and Kelsey, hang around the office as a "legal connection". I must say that even though the Dowhans are the runners up, Louise deserves a prize for having so many family members working together. A coveted Law Society bookmark is in the mail.

Rod Garson thought his family should win based on having the most variety and adventure. Rod's great uncle was Stuart Garson, called to the Manitoba Bar in 1919, whose political career included a stint as Federal Minister of Justice and Attorney General. Rob's grandfather, Robert, was called in 1925 and practised in Ashern. He died at age 37, leaving two children. The eldest was Graeme, who was called in 1962 and had an amazing career as a lawyer, judge, Deputy Attorney General and even, of all things, the CEO of the Law Society of Manitoba.

Graeme had three sons. Rod, who practised in the Yukon until he returned to Winnipeg to practice with Manitoba Justice in 1999. His twin brother, Robert, and his other brother, Douglas, were called to the Manitoba Bar in 1992. Robert currently practises in British Columbia and Doug practises in Nunavut.

Our own Ellie Turner won the big prize (well, another bookmark anyway). The Turner dynasty began with James Clark Turner, who was a lawyer in Michigan in the mid-1800s. His grandson, Fred Turner, was called to the Manitoba Bar in 1920 and was President of the Law Society in 1952.

Fred's son, Keith, was called to the Bar in 1951 and was President of the Law Society in 1981. Keith's daughter, Anne, is currently a law student at Robson Hall.

Fred's nephew, Doug, practises in Ontario. Keith's son-in-law, Larry Allen, practises with Legal Aid Manitoba. Anne's cousin, Glenn McFetridge, practises with Manitoba Justice and that is where he met and married Marjorie Webb, who also practises with Manitoba Justice. Glenn's niece, Jodi McFetridge is a third year law student in Toronto and will be articling in Winnipeg with Justice Canada next year. Altona lawyer, Harry Wiens, is also Anne's cousin by marriage and her uncle by marriage is Terrence Hunter, who is a lawyer in Ontario.

Ellie also wanted to win badly, but I don't think I can count the fact that Anne's godfather is Bill Kushneryk. I, of course, do count with pride Ellie herself (Keith's wife), who was a secretary at Christie, DeGraves, MacKay, Settle & Kennedy from 1956 to 1969, and is currently the pride and joy of our Discipline Department.

OUTSTANDING INTEREST ON CLIENT ACCOUNTS

Pursuant to Section 47 of *The Law Society Act,* a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of the *Income Tax Act* (Canada) on the date the bill is delivered. The interest rate effective for the period October 1, 2000 to December 31, 2000 is 10%.

HAVE YOU NOTICED?

We are always adding to the content of our website, and some recent changes to the home page make navigation through the site even easier.

The following items are now available for downloading from our site.

- 2000 Annual Report
- Form D Annual Trust Account
    - Report
    - Rules
    - Instructions
- Great Library Photocopy Order Form
- Model Policy on Alternate Work Schedules
- Model Policy on Maternity and Parental Leave

- Inter-Jursidictional Practice Information
- Bencher Bulletin
- Communiqué
- Law Corporations Information
    - Incorporation Guide
    - Application for Certificate Respecting Corporate Name
    - Application for Law Corporation Permit
    - Law Society of Manitoba Rules Regarding Law Corporations

In Memoriam

Lionel Green who passed away on May 6, 2000 at the age of 82. Mr. Green was called to the Bar on May 27, 1959 and practised law in Winnipeg for thirty years before retiring in 1990.

Michael Skremetka who passed away on August 13, 2000 at the age of 51. Mr. Skremetka was called to the Bar in June, 1973 and practised law in Winnipeg.

Robert James Krindle who passed away on September 15, 2000 at the age of 49. Mr. Krindle was called to the Bar on June 30, 1977. Subsequent to receiving his call in Manitoba, he moved to British Columbia where he resided until his death.

Arthur Allan Rich, Q.C. who passed away on September 16, 2000 at the age of 77. Mr. Rich was called to the Bar on December 8, 1954. He practised law in Winnipeg for 45 years. In 1969 Mr. Rich was appointed a Magistrate of Extended Jurisdiction and Judge of the Winnipeg Family Court and in 1972 he was appointed a part-time judge of the Provincial Court. In 1974 Mr. Rich received a Queen's Counsel appointment and in 1977 he was elected President of the Law Society of Manitoba. Mr. Rich also served as a lecturer in the Law Society's Bar Admissions program.

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